



Costs Decision

Site visit made on 31 August 2021

by C Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

**Costs application in relation to Appeal Ref: APP/W3330/D/21/3229997RD
Land to the rear of Yonderdown and 3 Curdleigh Lane, Blagdon Hill,
Taunton TA3 7SH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Hoskins & Mr Cosens for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission for erection of 2 single storey dwellings with associated works and landscaping.
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Decision

1. The application for an award of costs is allowed in part in the terms set out below.

Reasons

2. The Council acknowledge that the appeal needed to be redetermined because it made a procedural error during the notification process. It seems to me that this procedural error has the potential to fall as an example of unreasonable behaviour consistent with the those set out in paragraph 047 of the Planning Practice Guidance.
3. However, in this particular case, the main issue in dispute is not whether the Council made a procedural error, but whether this has led to the appellants incurring unnecessary or wasted expenses during the appeal process. Within their costs application, the appellants list the unnecessary and wasted expenses which they say were incurred as a result of the Council's procedural error. I have dealt with each of these in turn.
4. Firstly, it is argued that additional costs were incurred as a result of responding to the comments of interested parties. However, as the Council points out, the same interested parties would have likely made representations anyway had they been properly notified of the appeal. I would agree that responding to representations received as part of the appeal is a normal part of the appeal process and am therefore not convinced that wasted expense was incurred in responding to these comments.
5. On the other hand, the appellants would not have needed to produce a response to the Council's comments on the redetermined appeal had procedures been properly followed. A good deal of time passed between the Council originally determining the planning application and the appeal reaching the redetermination stage. During this time, there was a significant change in

circumstances and the Council produced a further statement to draw attention to the effect of phosphates on the Ramsar Site as well as new design guidance. The appellants had an opportunity to respond and did so by submitting further comments in a statement dated 28 June 2021. This would have been unnecessary if the appeal had not needed to be redetermined. Costs were therefore incurred as a result of the unreasonable behaviour.

6. The original ecology appraisal was dated August 2018 but, due to the delay caused by the procedural error, it was necessary for this to be updated and a new report was produced dated April 2021. The procedural error therefore led to wasted expenses being incurred.
7. The appellant's costs application also refers to expenses incurred as a result of "instructing Tetra Tech Planning to advise on the claim generally, the potentially town planning related implications on the allowed appeal and to establish a planning strategy for the redetermined appeal". Reference is also made to "considering the implications of the 1st and 2nd defendants' decisions not to defend Mr Meikle's claim in planning terms".
8. It is not entirely clear what the role of Tetra Tech Planning (formerly WYG) would have been in the legal processes surrounding the High Court action. Nonetheless, outside the legal processes, I accept that it there would have been a certain amount of communication with the appellants in order to keep them updated and offer advice, particularly on how to proceed with their development proposals once the case had been concluded. Some costs were therefore incurred as a result of the unreasonable behaviour.
9. However, I am not convinced that it would have been necessary to establish a new planning strategy for the redetermined appeal over and above responding to the comments of the Council and interested parties (matters I have addressed above). To a large extent, the appellants relied on their original appeal evidence to defend the Council's reason for refusal.
10. I understand that the appellants have been able to recover the costs of the High Court case and the cost of instructing solicitors. However, I am informed that costs associated with instructing Counsel to advise on and subsequently defend the High Court action were not recovered. Clearly, there would have been no need to have instructed Counsel if the local planning authority had not made an error in the notification process. Yet while the appellants exercised their rights to challenge the decision, the costs of appointing a barrister related to the judicial process. The costs were not incurred as part of the planning application or appeal process. Therefore, unnecessary or wasted expense in the appeal process has not been demonstrated.

Conclusion

11. I conclude that the Council has demonstrated unreasonable behaviour during the appeal process. This has led to the appellants incurring some unnecessary expenses and a partial award of costs is justified. The actual amount of the unnecessary expense is not a matter for this costs decision.

Costs order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

Somerset West and Taunton Council shall pay to Mr & Mrs Hoskins and Mr Cosens, the costs of the appeal proceedings described in the heading of this decision, limited only to those costs incurred in relation to: responding to the Council's comments on the redetermined appeal, receiving consultants' advice on planning matters during the High Court action and, finally preparing updated an ecological report.

13. The applicant is now invited to submit to Somerset West and Taunton Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

C Cresswell

INSPECTOR